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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re O.P., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B286773
(Super. Ct. No. PJ50889)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

O.P.,

Defendant and Appellant.

O.P. appeals a juvenile court disposition order declaring him a continuing ward of the court and committing him to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF), for a maximum term of confinement of

20 years. (Welf. & Inst. Code, §§ 602, 202, subd. (e)(5).)¹ We decide that the court did not abuse its discretion by imposing the DJF commitment, and affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 1, 2014, the Los Angeles County prosecutor filed a juvenile delinquency petition against 19-year-old O.P. alleging the commission of sexual crimes between 2006 and 2009 against young children. The five-count petition alleged that O.P. committed forcible sodomy, two counts of continuous sexual abuse, and two counts of lewd acts. (Pen. Code, §§ 286, subd. (c)(2), 288.5, subd. (a), 288, subd. (a).) The victims included a boy, a girl, and an infant. The three children were siblings who were in the care of O.P.'s mother.

In March 2014, O.P. visited the parent of his victims and confessed to the sexual crimes. O.P. admitted sodomizing the two older children and touching the vagina of the infant. The older children also orally copulated and masturbated O.P. His sexual crimes against the boy victim were frequent and continued for several years. When police officers later interviewed O.P., he admitted committing the sexual crimes and stated that he had substance abuse problems. The two older children confirmed that O.P. committed sexual acts against them.

Pursuant to an August 4, 2015, plea agreement, O.P. admitted allegations of forcible sodomy, one count of continuous sexual abuse, and one count of lewd acts (counts 1, 3, and 4). The juvenile court sustained those allegations of the delinquency petition, declared O.P. a ward of the court, and placed him on probation with terms and conditions. The court then dismissed

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

the remaining allegations (counts 2 and 5). Conditions of O.P.'s probation included residence at a drug treatment program for one year ("First To Serve" program) and enrollment in a 52-week sex offender treatment program.

Four months later, O.P. "walked away" from the residential treatment program. In response, the juvenile court issued a notice of warrant. O.P. was then 21 years old.

Subsequently, on January 7, 2016, the juvenile court ordered O.P. to reside at H.O.W. House, a drug and alcohol recovery home. He complied with the court's order and also enrolled (for the first time) in a 52-week program for sex offender counseling at "New Directions." For six months, O.P. complied with the requirements of the two treatment programs and passed toxicology screens.

In July 2016, O.P. failed to report for scheduled probation appointments and drug testing, and in August 2016, he ceased attending sex offender counseling. The prosecutor then filed a notice of violation and requested that a probation violation hearing be set. Also, in October 2016, the drug treatment program discharged O.P. after he tested positive for use of marijuana.

On April 12, 2017, the juvenile court found O.P. in violation of the conditions of his probation. It released him on home probation and ordered him to reenroll in H.O.W. House and New Directions. O.P. failed to comply with these orders, however, and the prosecutor soon moved to commit him to DJF.

On November 30, 2017, the juvenile court held a disposition hearing after finding O.P. once again in violation of the conditions of his probation. The probation report recommended a continuance of home probation. O.P. requested that he be

permitted to reenroll in residential drug treatment and sex offender counseling. Following argument by the parties, the court ordered that O.P. be committed to the DJF, stating: "[T]he former minor, now an adult, has never complied with his conditions of probation. Plans have been made, opportunities been given, but he doesn't show he wants to do what he is supposed to do. So, I am convinced the People's motion is well taken, and I am going to rule in favor of the People and order commitment to the Department of Juvenile Facilities." O.P. was 23 years old at the time of the DJF commitment.

O.P. appeals and contends that the juvenile court 1) lost jurisdiction when he became 21 years old, and 2) abused its discretion by committing him to DJF.

DISCUSSION

I.

O.P. asserts that the juvenile court lost jurisdiction when he turned 21 years old. Specifically, he contends that pursuant to section 607, the court retains jurisdiction regarding a ward until age 25 only if two conditions are met: First, the ward's adjudication concerns a section 707, subdivision (b) offense; and, second, the ward is committed to DJF prior to age 21. O.P. argues that the court erred by denying his two motions to terminate jurisdiction because the second condition was not met.

Section 607 provides: "(a) The court may retain jurisdiction over a person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains 21 years of age, except as provided in subdivision[] (b) [¶] (b) The court may retain jurisdiction over a person who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) [forcible sodomy], until that

person attains 25 years of age if the person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities."

O.P. does not provide authority supporting his contention. Judicial decisions generally discussing section 607, subdivision (b) do not suggest that the juvenile court's jurisdiction over a ward to age 25 is contingent on the court committing the ward to DJF before age 21. For example, *In re Jose S.* (2017) 12 Cal.App.5th 1107, 1119, states, "Once a juvenile is adjudged a ward of the court under either section 601 or, as here, section 602, the juvenile court may retain jurisdiction over that person until he or she attains the age of 21, or until age 25 if the ward committed certain offenses." (Accord, *In re Tino V.* (2002) 101 Cal.App.4th 510, 512-513; *Joey W. v. Superior Court* (1992) 7 Cal.App.4th 1167, 1172.)

The plain language of section 607 requires only that the ward be adjudged of committing a specified offense and that he ultimately be committed to DJF. Those circumstances occurred here. O.P. committed forcible sodomy, a section 707, subdivision (b) offense, which resulted in his placement in less restrictive programs for nearly two years. Following his repeated failures to comply with the condition of probation, O.P, at age 23, was committed to DJF.

Moreover, examination of section 607, subdivision (f) refutes O.P.'s contention. That subdivision requires the discharge of wards committed to the DJF "upon the expiration of a two-year period of control, or when the person attains 23 years of age, whichever occurs later." (*Ibid.*) The "whichever occurs later" language suggests the Legislature contemplated circumstances in which a ward would be committed to the DJF

after age 21. Otherwise, the language would be superfluous and a statutory interpretation to be avoided. (*In re J.W.* (2002) 29 Cal.4th 200, 209 [principle of statutory construction is that every part of a statute serves a purpose and that nothing is superfluous].)

For these reasons, we reject O.P.'s contention.

II.

O.P. argues that he was improperly committed to DJF for purposes other than rehabilitation. He asserts that the juvenile court did not consider less restrictive alternatives. O.P. relies upon the psychological evaluation of Doctor Haig Kojian that he (O.P.) is not a pedophile and poses no danger to the community.

Pursuant to section 734, "No ward of the juvenile court shall be committed to the [DJF] unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the [DJF]." In determining an appropriate disposition, the court is required to consider the probation officer's study and, specifically, the age of the minor; the circumstances and gravity of the offense committed by the minor; and the minor's prior delinquency. (§§ 706, 725.5; *In re Greg F.* (2012) 55 Cal.4th 393, 404.)

We review a commitment decision for an abuse of discretion, drawing all reasonable inferences in favor of the juvenile court's order. (*In re A.R.* (2018) 24 Cal.App.5th 1076, 1080; *In re Edward C.* (2014) 223 Cal.App.4th 813, 829.) We do not reweigh the evidence or reassess witness credibility; we also do not resolve conflicts in the evidence. (*Edward C.*, at p. 829.) A DJF commitment is not an abuse of discretion where the evidence

demonstrates a probable benefit to the minor from the commitment and that less restrictive alternatives would be ineffective or inappropriate. (*A.R.*, at p. 1080; *Edward C.*, at p. 829.) The juvenile court abuses its discretion, however, where its factual findings are not supported by sufficient evidence. (*In re Khalid B.* (2015) 233 Cal.App.4th 1285, 1288.)

The juvenile court did not abuse its discretion by the DJF commitment. (See *In re A.R.*, *supra*, 24 Cal.App.5th 1076, 1080-1081 ["Although the [DJF] is normally a placement of last resort, there is no absolute rule that a [DJF] commitment cannot be ordered unless less restrictive placements have been attempted"].) As the court noted, O.P. has never complied fully with the conditions of his probation, including completing one year of residential treatment and 52 weeks of sex offender counseling in less restrictive placements. O.P. "walked away" from a less restrictive facility, and did not reenroll when ordered by the court. He enrolled in sex offender treatment approximately five months after adjudication, but did not complete treatment. O.P. also did not report to his probation officer after October 2016.

A DJF commitment is not necessarily contrary to a minor's welfare. (*In re Greg F.*, *supra*, 55 Cal.4th 393, 417.) The juvenile court here reasonably decided that O.P. may best be served by the structured environment of DJF and the special programs available there, including sex offender treatment consistent with DJF protocols. (§ 727.6 [wards who have committed sexually violent offenses and committed to DJF "shall be given sexual offender treatment consistent with protocols for that treatment developed or implemented by the [DJF]]").

The juvenile court also was not bound by Doctor Kojian's psychological evaluation of O.P.'s danger to the community. The evidence of O.P.'s sex crimes includes sodomizing a child four to five times a month over a period of two to three years. The court impliedly determined that the psychological evaluation deserved little weight. (*In re Edward C.*, *supra*, 223 Cal.App.4th 813, 829 [juvenile court determines the weight to be given evidence].)

Moreover, the juvenile court was not required to expressly state on the record its reasons for rejecting continued less restrictive placements or the recommendation of the probation department. (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1159; *People v. Delson* (1984) 161 Cal.App.3d 56, 63 [probation officer's recommendation is advisory only and intended to aid the court in determining an appropriate disposition].) The juvenile court file sufficiently sets forth prior placements and O.P.'s many probation violations. The court also received testimony from O.P.'s probation officer. We conclude that sufficient evidence supports the court's disposition order.

The order is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Morton Rochman, Judge

Superior Court County of Los Angeles

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